

# **Deposition of Bradley Probst**

**Rodriguez v. Hernandez, et al.**

**October 5, 2021**



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<p>IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF KING</p> <hr/> <p>LAZARO RODRIGUEZ, an ) individual, ) Plaintiff, ) v. ) ) No. 19-2-09925-31 EFRAIN HERNANDEZ and JANE DOE ) HERNANDEZ, and the marital ) community comprised thereof; ) DLM, INC., ) Defendants. )</p> <hr/> <p>VIDEOCONFERENCE DEPOSITION UPON ORAL EXAMINATION OF BRADLEY PROBST</p> <hr/> <p>(All parties appearing via videoconference)</p> <p>DATE TAKEN: OCTOBER 5, 2021 REPORTED BY: CRYSTAL HEREFORD, RPR, CCR 21004877</p>	<p>DEPOSITION OF BRADLEY PROBST EXAMINATION INDEX</p> <p>EXAMINATION BY PAGE Ms. Bradshaw. . . . . 5</p> <p>EXHIBIT INDEX EXHIBITS FOR IDENTIFICATION PAGE Number 1 5/4/21 Report -- Number 2 Professional Biographical Outline 9</p>
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<p>1 APPEARANCES 2 3 FOR PLAINTIFF VIA VIDEOCONFERENCE: 4 SUNSHINE M. BRADSHAW, ESQ. 5 WARRIOR WOMAN LAW, PLLC 6 569 Division Street 7 Suite D 8 Port Orchard, Washington 98366 9 360.550.5276 10 sunshine@warriorwomanlaw.com 11 12 DAVID LaCROSS, ESQ. 13 LaCROSS &amp; MURPHY, PLLC 14 559 Bay Street 15 Port Orchard, Washington 98366 16 360.895.1555 17 fdlacross@gmail.com 18 19 FOR DEFENDANTS: 20 21 LISA A. LIEKHUS, ESQ. 22 LILY YEE, ESQ. 23 LAW OFFICES OF MARK DIETZLER 24 1001 Fourth Avenue 25 Suite 3300 Seattle, Washington 98154 206.473.4016 lisa.liekhus@libertymutual.com</p> <p>* * * * *</p>	<p>1 VIA VIDEOCONFERENCE; OCTOBER 5, 2021 2 12:57 P.M. 3 -oOo- 4 5 THE REPORTER: We will go on the record. 6 Will counsel please announce your 7 appearance, as well as anyone appearing with you, and 8 stipulate to the remote swearing of the witness, 9 beginning with the taking attorney. 10 MS. BRADSHAW: This is Sunshine Bradshaw. 11 I'm counsel for Plaintiff Lazaro Rodriguez. I give my 12 permission to swear the witness remotely. 13 THE REPORTER: Thank you. 14 MS. LIEKHUS: Hi. This is Lisa Liekhuis, 15 and I represent the defendants. And you have my 16 permission to swear the witness remotely as well. 17 THE REPORTER: And we have two more people 18 appearing. Could you please announce your appearances? 19 MR. LaCROSS: David LaCross, co-counsel on 20 behalf of the plaintiff. 21 THE REPORTER: Thank you. 22 MS. YEE: Good afternoon. Lily Yee on 23 behalf of Defendants. 24 THE REPORTER: Thank you. 25 Mr. Probst, would you raise your right</p>

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1 brutalization of how I pronounced it.

2 A. Sure. It's just a -- I guess a more scientific  
3 way of saying how a human would move or how a human would  
4 respond to forces or loading on the body, how it would  
5 move in response.

6 Q. "Biomechanical failure."

7 A. Simply that it's a mechanical failure of  
8 biologic tissue.

9 Q. That doesn't mean anything to me. Can you give  
10 me a little bit more? Can you use it in a little bit  
11 more -- because obviously, I've -- I've Googled. I've  
12 Googled a definition of "biomechanical failure," and I  
13 didn't come up with anything that I really understood.  
14 So perhaps you could help me understand a little bit  
15 better.

16 Without using the same terms, right? I'm  
17 asking you to define "biomechanical failure." So if you  
18 could define those terms without using, you know,  
19 "biomechanical failure," that would be great.

20 A. It's kind of hard not to define something  
21 without defining something. But it's pretty basic,  
22 pretty simplistic. It's mechanical failure. Something  
23 has broken. And it's a biologic material. It's a  
24 biomaterial -- biomechanical or biomedical failure. You  
25 break a bone, you have caused some kind of mechanical

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1 failure to biologic tissue.

2 Q. So those of us that are less educated than you  
3 might call that an injury?

4 A. I would ask you to define "injury." Again, I  
5 don't know in what context you might be utilizing that,  
6 and it's a very vague term that is not really a precise  
7 use of language.

8 Q. Do you mean injury when you talk about  
9 biomechanical failure?

10 A. Nope.

11 Q. Okay. What's the difference when you talk  
12 about a broken bone being a biomechanical failure and a  
13 broken bone being an injury?

14 A. I don't use the term "injury" because it lacks  
15 precision of language. And as I just said -- and you  
16 have failed to define it -- it's meaningless in that  
17 sense. So I can't compare one to the other until you  
18 define what you mean by an injury.

19 And, again, it's imprecise language. If you  
20 look it up, I think it simply says "to cause harm."  
21 That's very vague. So we're only using precision of  
22 language, trying to define specifically what is being  
23 discussed when we're talking about a biomechanical  
24 failure.

25 Q. And I certainly appreciate your attention to

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1 detail and dedication to precision. What I mean by  
2 injury -- and I'm going to quote here, because this is  
3 the definition -- hurt, damage, or loss sustained.

4 A. Right. You can hurt somebody's feelings, and  
5 that really doesn't tell you much about anything. So,  
6 again, it doesn't actually give you any precision of  
7 what's being hurt.

8 Q. So you just don't use the term "injury" at all  
9 in your vocabulary.

10 A. Not in the context of a biomedical analysis,  
11 no.

12 Q. Would that be improper?

13 A. Oh, I've used it before. Because, again, just  
14 like you said, you have no knowledge of that term, and to  
15 try to be kind to some people, like, well, let's use some  
16 colloquialisms. But then it opens a whole different can  
17 of worms, because then people misinterpret a variety of  
18 things like that. So now I simply choose to use  
19 biomechanical failure because it is precision of  
20 language. It's trying to be very precise in what is  
21 being analyzed, what is being stated.

22 Q. And it has nothing to do with courts excluding  
23 you from testifying about injuries?

24 MS. LIEKHUS: I'm going to object;  
25 argumentative.

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1 THE WITNESS: Nope, not at all.

2 Q. (BY MS. BRADSHAW:) It's just a coincidence  
3 that after 15 or 20 courts excluded you from testifying  
4 you went through all of your reports and got rid of the  
5 term "injury" and substituted "mechanical failure"?

6 MS. LIEKHUS: Objection; argumentative,  
7 form.

8 THE WITNESS: No. It has nothing to do  
9 with that. As I said, just like you yourself had no  
10 knowledge or background or idea of what a biomechanical  
11 failure was -- again, if I were to use that, it would  
12 create confusion. But you can also see just by your own  
13 definition of "injury," meaning it's just harm, that's  
14 not of any use either.

15 So I'm kind of torn between having lots of  
16 confusion or saying "I'm sorry. You should be able to  
17 look up this term and understand it." But it still  
18 creates issues. But it has nothing to do with any court  
19 or court rulings or anything like that.

20 Q. (BY MS. BRADSHAW:) Definition of "normal  
21 physiological operation."

22 A. I don't think I used the term "operation"  
23 anywhere in my report.

24 Q. Page 2 of your supplemental report. "We again  
25 reiterate that the subject incident would have resulted

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1 collision, 3 Gs of force. Let's even say rear-end. A  
 2 rear-end motor vehicle collision, 3 Gs of force, is it  
 3 possible for an individual to be injured?

4 MS. LIEKHUS: Object to form.

5 You can go ahead and answer.

6 THE WITNESS: You've not -- not offered  
 7 any specifics. You haven't said what the individual is.  
 8 You haven't given a pulse duration, any preexisting  
 9 trauma that might exist, tolerance levels, safety  
 10 equipment. You've offered nothing.

11 Q. (BY MS. BRADSHAW:) Because all of those things  
 12 are important to that analysis.

13 A. No. You've just not offered anything. You  
 14 just said, "What happens in a car accident?" basically  
 15 and provided no additional information. So as I said  
 16 previously, the best anybody could ever say with that  
 17 limited information is something might occur, something  
 18 might not occur.

19 MS. BRADSHAW: That is all the questions I  
 20 have for you, Mr. Probst. Thank you.

21 Would you like to review the transcript  
 22 for accuracy? Or do you waive?

23 THE WITNESS: Oh, I'm fine waiving.

24 MS. BRADSHAW: We'd like a copy, please.

25 MS. LIEKHUS: All right. And, Crystal,

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1 CERTIFICATE

2  
 3 STATE OF WASHINGTON  
 4 COUNTY OF KING

5  
 6 I, CRYSTAL L. HEREFORD, a Certified Court  
 7 Reporter licensed in and for the State of Washington, do  
 8 hereby certify that the foregoing transcript of the  
 9 deposition of BRADLEY PROBST, having been duly sworn, on  
 10 October 5, 2021, is true and accurate to the best of my  
 11 knowledge, skill, and ability.

12 IN WITNESS WHEREOF, I have hereunto set my hand  
 13 and seal this 20th day of October 2021.

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 CRYSTAL HEREFORD, RPR  
 CCR License No. 21004877

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1 I'll order a copy as well. And I take an e-tran.  
 2 (Proceedings concluded at 2:08 p.m.)  
 3 (Signature waived.)  
 4 (Exhibit Numbers 1 and 2 marked.)  
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